

1 sentence that --

2 A Oh, sites. Okay. Okay. And you want me to tell
3 you whether I think that they're the same or not?

4 Q Well, let me focus your attention -- you -- with
5 respect to the statement in your declaration, you agree with
6 me, I think you have already testified, that in your
7 declaration you're saying that the statement in Exhibit 1
8 refers only to the engineer's visit to the sites. And in the
9 quoted sentence from page 4 of TBF Exhibit 268 the sentence
10 says that, "The reference in Exhibit 1 is to the engineer's
11 visit, as well as David Gardner's viewing of the sites." My
12 question --

13 A One's talking about a visit and the other's talking
14 about ascertaining site preparation work or modifications. I
15 think they're talking about two different things.

16 Q They're both talking about the statement in Exhibit
17 1 of the applications to the FCC and they --

18 A Yeah.

19 Q -- are both talking about the sentence in that
20 application that refers to the representative of Raystay and
21 the engineer having visited the sites.

22 A Yeah. Yes. Sorry. The engineer and I both visited
23 the sites.

24 Q But the statement in Exhibit 1 of the FCC
25 applications referred, according to your declaration, just to

1 the engineer's visit? Correct? You've testified to that?

2 A That's because it talked about ascertaining site
3 preparation work and modifications plus the visitation, and
4 the engineer did that and I did that. The reference to
5 visitations of the sites refers to the engineer's visits to
6 both the Lancaster and Lebanon site. I still think they say
7 the same thing.

8 Q Did you -- were you given an opportunity to review a
9 draft of the Opposition to Contingent Motion to Enlarge Issues
10 that Glendale Broadcast Company filed on June 7, 1993? If
11 you'll look at the first page of TBF Exhibit 268 it shows you
12 the title of the document. My question is were you given an
13 opportunity to review that document?

14 A I don't recall if I reviewed this document or not.

15 MR. EMMONS: Your Honor, I move Exhibit 268 into
16 evidence.

17 MR. SCHAUBLE: I object on the basis of relevance,
18 Your Honor. I don't think this has been tied into the
19 witness' knowledge at all or that it has been shown to have --
20 that he's either read it or that it has any relevance to the
21 designated issue.

22 JUDGE CHACHKIN: Well, no foundation has been laid.
23 The witness had nothing to do with the preparation of the
24 opposition.

25 MR. COHEN: Or that he ever read it.

1 MR. EMMONS: Your Honor, the, the document -- the
2 pleading document, TBF Exhibit 268, contains a form of words
3 in a statement that we will argue is different from the -- and
4 not consistent with the statement made in Mr. Gardner's
5 declaration which the pleading purports to characterize and on
6 its face, therefore, I think it's relevant under the issue
7 which is the applicant's candor.

8 MR. SCHAUBLE: Your Honor --

9 JUDGE CHACHKIN: The question is the -- if the
10 opposition was prepared by counsel, I don't know -- and it
11 wasn't -- no certification --

12 MR. EMMONS: Well, let me, let me hold then -- let
13 me withdraw my offer of 268 for now and we will revisit this
14 with a later witness.

15 JUDGE CHACHKIN: All right. I'll -- all right. TBF
16 Exhibit 28 -- 268, a ruling is reserved on the exhibit.

17 BY MR. EMMONS:

18 Q Now, Mr. Gardner, the first time -- I want to focus
19 on the first time you visited each of the two sites, the
20 Lancaster site and the Lebanon site, and ask you whether on
21 your first visit to, to those two sites did they occur on the
22 same day?

23 A I don't recall if my visits to both sites both times
24 occurred on the same day or not.

25 Q Well, did -- was there any day on which you visited

1 both of those two sites?

2 A Yes, there was. On one visit I visited both sites
3 the same day.

4 Q Okay. And what you're telling me is that you don't
5 recall whether that was the first time you visited those sites
6 or some other time you visited the sites?

7 A I, I recall the second visit was the same day. I
8 don't recall if the first visit was the same day or a
9 different day.

10 Q The second visit was the same day?

11 A Yes.

12 Q The second visit to each of the two sites --

13 A Yes.

14 Q -- was the same day? And what -- was that by design
15 or did that just happen?

16 A That was by design.

17 Q You planned to make a trip on the same day to, to
18 both sites?

19 A Yes.

20 Q Okay. And that's pretty much an all day project, is
21 it not, if you're setting out from Carlisle? Did you set out
22 from Carlisle?

23 A I did.

24 Q So was that an all day project visiting both the
25 Lebanon and the Lancaster sites on one day?

1 A It takes the better part of a business working day,
2 yes, assuming you're working an eight hour day.

3 Q Now, let me ask you with respect to the first visit
4 to each site, and you testified that it was the second visit
5 that you visited them both on the same day and I take it,
6 therefore, that to the best of your recollection the first
7 time you visited each of those two sites you did so on
8 separate days at different times?

9 MR. SCHAUBLE: Objection. I don't think that was
10 the witness' testimony.

11 MR. EMMONS: Well, let me ask if that's the witness'
12 recollection.

13 MR. GARDNER: My recollection is that I don't recall
14 whether I visited both sites the same day the first time or
15 not.

16 BY MR. EMMONS:

17 Q Do you recall whether on the first time you visited
18 them in the same general time frame if not on the same day?
19 In other words, on consecutive days perhaps or during the same
20 week, for example?

21 A I recall visiting the sites, but I don't recall how
22 close together the visits were if, indeed, they possibly could
23 have been on the same day or they could have been a week or
24 two weeks or more apart. I just don't recall.

25 Q What was your purpose in visiting the two sites the

1 first time you visited them?

2 A I knew that Raystay had made an application to the
3 Commission using those sites and I wanted to see them for
4 myself.

5 Q You say Raystay had made an application or was about
6 to make an application?

7 A I believe it was, it was sometime around the time of
8 the application. It could have been before. It could have
9 been after. I think it was after, but I can't say for
10 certain.

11 Q If it was after -- I take it since you said it was
12 around the time of the applications, if it was after the
13 applications were filed it was reasonably soon after the
14 applications were filed. Is that your recollection?

15 A My recollection on the timing of the visits to the
16 first site is that I made them, but exactly when I'm not
17 certain.

18 Q But I understood you to testify that it was around
19 the time of the applications. You can't be sure whether it
20 was before or after, but I thought it was around the time of
21 the applications. Is that correct?

22 A Yes, but the exact timing I'm not sure of.

23 Q Now, this first visit, it was not when you were
24 negotiating with Trinity for the sale of these construction
25 permits, I assume?

1 A No.

2 Q And then that was roughly August to December of
3 1991? Correct?

4 A Correct.

5 Q Okay. And the first visit to these sites was not,
6 was not while the stations -- while the permits were the
7 subject of a contract with Mr. Fenstermacher? Am I correct
8 about that?

9 A It was not.

10 Q And, and the first visit to the sites was not during
11 the period of time of negotiations with Mr. Fenstermacher that
12 led up to that contract, was it?

13 A I don't know exactly when negotiations with Mr.
14 Fenstermacher started.

15 Q Well, your involvement started, you recall I think
16 from testimony the other day and the documents we were looking
17 at, that at least by January of 1991?

18 A January '91.

19 Q All right.

20 A Okay. Yes.

21 Q Your last answer, I take it you're agreeing --

22 A I agree with you, yes. I don't believe I visited
23 the sites during the time that I was involved with the
24 negotiations with Mr. Fenstermacher.

25 Q Now, on your first visit to the, to the Lebanon

1 site, and my questions now are going to focus on Lebanon until
2 I indicate otherwise, what did you ascertain on that visit?

3 A Well, I found, I found the site. I looked at its
4 proximity to the population of Lebanon and Lebanon County. I
5 looked at its height in proximity to the population of Lebanon
6 and Lebanon County and felt that it was on rather a high point
7 which made that desirable. It seemed to be the highest
8 building in Lebanon or one of the highest buildings in
9 Lebanon. It set -- geographically it set on a high hill and
10 the building itself was tall, so that was good. It was easy
11 to get to. It already had some antennas or an antenna on the
12 roof. I went up to the door that led to the elevator shaft
13 which then led to the roof and it had windows so you could see
14 everything and I could see that it had lots of room in the
15 elevator mechanical building on top of the building, enough
16 room to put a transmitter and an STL receiver if necessary.
17 It had a big electrical box which was good, which seemed to
18 indicate it had 220 volts which is all you'd need up there to
19 run an LPTV station. There are probably other things that I
20 saw that I don't recall now.

21 Q What determinations did you make, if any, concerning
22 site preparation work that would have to be conducted there?

23 A Other than making sure you had adequate electric,
24 the main thing would be to find some way to mount the tower
25 structure to the building itself to support the antenna.

1 Q Well, did you make any determination of how that was
2 going to be done?

3 A I did not. I had some ideas, but I didn't make any
4 exact determination.

5 Q Did you make any determination about modifications
6 at the site?

7 A Only that you would have to anchor the tower on the
8 roof somehow so that it didn't -- the wind loadings in the
9 tower wouldn't affect the structure itself.

10 Q Would you turn to your deposition, page 115 -- or
11 let me say 114? And starting at line 20, you will see from
12 line 18 that the question referred to your first visit to the
13 Lebanon site and at line 20 there is the following testimony:
14 "Question: Now, on that first visit did you, did you make a
15 determination as to what site preparation work was needed?
16 Answer: Generally I looked at the site and the location and
17 made a determination that it was generally acceptable to me to
18 put in an antenna, a tower and a transmitter. Question: Did
19 you make a determination as to what modifications, if any,
20 needed to be made at the site? Answer: I made no
21 determination, no." Now, you told us a moment ago that you
22 made a determination about a modification, if I recall your
23 testimony, and as I read your deposition testimony you made no
24 determination of that modification, so which is it?

25 A Well, there's been a lot of discussion during the

1 preparation of this case and perhaps I'm getting the
2 modification determination confused either at the time of the
3 deposition or now. At the time of the deposition I was -- I
4 hadn't focused on the LPTVs at least as far as the site work
5 for quite some time and it's possible that I forgot that then
6 and remember it now.

7 Q What -- I'm still now on the Lebanon -- your first
8 visit to the Lebanon site. While you were at that site on the
9 first visit did you take any notes?

10 A I don't recall whether I took any notes or not.

11 Q In other words, you don't recall taking any notes?
12 Is it fair to say it that way? You have no recollection of
13 taking any notes at the Lebanon site first visit?

14 A I don't recall taking any notes.

15 Q Did you make any memorandum of your findings at that
16 site, first visit?

17 A I don't recall making any memorandum of my visit to
18 the site.

19 Q Do you know now of any document -- other than the
20 testimony that's been prepared in this case or given in this
21 case, do you know now of any document that reflects your first
22 visit to the Lebanon site?

23 A I don't know of any document that reflects my visit
24 -- first visit to the Lebanon site.

25 Q Did you bring anybody with you on that visit?

1 A I don't recall bringing anybody with me on the first
2 visit to the Lebanon site.

3 Q Did you alert anybody at the Quality Inn, that's
4 the, that's the name of the site, the Lebanon Quality Inn, did
5 you alert anybody there that you were coming before you paid
6 that visit to the site?

7 A I did not alert anybody at the Quality Inn prior to
8 my visiting the Lebanon site.

9 Q Why not?

10 A I did not do it.

11 Q But why?

12 A I did not do it.

13 Q Is there a reason you did not do it?

14 A Yeah. I, I did not do it.

15 Q Is there a particular reason in your mind why you
16 refrained from doing it?

17 A I didn't refrain from doing it. I just didn't do
18 it.

19 Q Well, did you have a reason for not doing it or you
20 just didn't do it?

21 A I just didn't do it.

22 Q Did you ask to speak to the manager of the premises
23 while you were at the site on the first visit?

24 A I don't recall asking to speak to the manager while
25 I was on the site at the first visit.

1 Q Why didn't you ask to speak to the manager.

2 A I didn't do it.

3 Q Is there a reason why?

4 A I just didn't do it.

5 Q Did you speak with anyone else at the site?

6 A When I visited the sites, and I don't recall whether
7 it was the first visit or the second visit or the visits where
8 I drove up to the sites, I recall speaking to people who were
9 at the sites who appeared to be employed at the sites.

10 Q I'm -- my questions now are confined to the Lebanon
11 site. I want you to understand that.

12 A Okay. I don't recall when or where -- excuse me. I
13 don't recall when I spoke to people at the site. However, I
14 talked to people at the site when I was there. I don't recall
15 whether it was the first visit, the second visit, or other
16 visits.

17 Q Who did you talk to?

18 A At the Lebanon site specifically there was a
19 maintenance employee who was on the same floor as the access
20 to the roof and I remember having a general discussion with
21 that employee about the building, the roof, what the roof was
22 made out of, how you got to the roof, who had access to the
23 roof.

24 Q Well, how did you happen to come to speak to that
25 person?

1 A They were standing there.

2 Q But when, when you arrived at the Lebanon site -- I
3 assume you drove to the site?

4 A Yes.

5 Q Parked your car.

6 A Yes.

7 Q Got out. You went where, into the Quality Inn?

8 A Yes.

9 Q and then what? You didn't, you didn't -- you don't
10 recall asking to see the manager?

11 A No.

12 Q And I take it you didn't ask to see anyone else so
13 you didn't go to the reception desk and ask for somebody or
14 announce yourself, did you?

15 A I recall asking someone at the reception desk where
16 the elevators were.

17 Q And what was the purpose of that inquiry?

18 A To get to the roof.

19 Q And you then took the elevators?

20 A Yes.

21 Q And then what?

22 A I got off at the top floor and walked around until I
23 found the door that had access to the elevator maintenance
24 room.

25 Q And is that the area where you encountered this

1 maintenance employee that you mentioned?

2 A Yes. It was the top floor.

3 Q Now, am I correct that you testified you don't
4 recall whether that was the first visit you made to Lebanon or
5 a subsequent visit?

6 A I don't recall which visit it was.

7 Q And after speaking to the maintenance employee, what
8 did you do?

9 A I looked out -- the door has a window that you can
10 look into the maintenance room or the mechanical room with and
11 it also looks straight through another door to the roof so you
12 can see the actual construction of the roof.

13 Q Was the door to the maintenance room locked or
14 unlocked?

15 A Locked.

16 Q Did you ask the maintenance employee if you could go
17 in and see the room?

18 A No.

19 Q Is there a reason why you didn't ask that?

20 A I could see the whole room through the window.

21 Q What about the roof? Could you see the whole roof?

22 A No.

23 Q Did you ask the maintenance employee if you could
24 have access to the roof?

25 A No.

1 Q And the roof is where the, where the antenna was
2 going to go, right?

3 A Tower with antenna, yes.

4 Q That's what the, the application was proposing?
5 Correct?

6 A Yes.

7 Q And yet you didn't ask to go out on the roof to see,
8 see the place where the antenna was supposed to go?

9 A Well, I could see it through the windows.

10 Q You could see the whole roof or just part of the
11 roof?

12 A Part of the roof.

13 Q You didn't want to go out and test the roof in any
14 way?

15 A No.

16 Q Now, would you look at your written testimony,
17 Glendale Exhibit 209, page 6?

18 A Yes.

19 Q And in the first -- the carryover paragraph on that
20 page, about six or seven lines down, you say, "At the Quality
21 Inn I looked through the window that looked out on the
22 elevator room and the roof. I judged that the elevator room
23 would be the best place to put the transmitter." And my
24 question to you is best place compared to what?

25 A Compared to outside on the roof.

1 Q But you didn't go on the roof.

2 A Right.

3 Q And did you, did you look at any other part of the
4 building to determine whether there was a better place than
5 the elevator room for the transmitter?

6 MR. SCHAUBLE: Objection, Your Honor. I think we're
7 getting beyond the bounds of relevance here.

8 MR. EMMONS: We're in a question of credibility,
9 Your Honor, and these are relevant questions.

10 MR. SCHAUBLE: I don't see what this has to do with
11 credibility, Your Honor.

12 JUDGE CHACHKIN: I'll overrule the objection.

13 MR. GARDNER: Could you restate the question?

14 BY MR. EMMONS:

15 Q Did you look at any other parts of the building to
16 determine whether there was a better place than the elevator
17 room for location of the transmitter?

18 A All the other parts of the building were, I believe
19 -- it's been a long time since I've been there now, but I
20 believe they were below the level of the elevator/mechanical
21 room. I believe it sits like on top of the roof so,
22 therefore, the next floor down starts with actual hotel rooms.
23 So since you're going to want to have your tower on top of the
24 roof to get as much height as you can, to get as much coverage
25 as you can, and you want to have your transmitter as close to

1 your antenna as you can to keep your transmission line short
2 to keep transmission line loss to a minimum, it seemed to me
3 at the time that the best place to put the transmitter would
4 be as close to the top of the roof as you can and that would
5 be the elevator mechanical room.

6 Q Before you went to the site, did you know that there
7 was an elevator room?

8 A It seems to me without looking at the exhibits again
9 that the, the drawing on the first application showed a, a
10 elevator mechanical room. I'm not certain of that, but I
11 thought there was something to that effect.

12 Q So you had consulted the application drawings before
13 you, before you went to the site?

14 A Well, certainly before I signed the application I
15 read the application and looked at all the exhibits.

16 Q Now, did you, did you measure the elevator room
17 while you were there?

18 A No.

19 Q Now, we're talking, we're talking about a 1 kilowatt
20 transmitter?

21 A Yes.

22 Q And how much space would, would the transmitter
23 take?

24 A Well, the new ones, the solid state ones, are the
25 size of a shopping cart.

1 Q Well, at the time. Now, we're talking -- you made
2 this visit in -- about 1989, didn't you?

3 A '89 or '90, yeah.

4 Q So, so what at that time would a 1 kilowatt
5 transmitter take how much space?

6 A Oh, they're about as wide as this desk and maybe six
7 feet tall and probably the size of this desk.

8 Q Just for the record, that would be what, dimensions
9 of roughly three feet wide by two feet deep perhaps?

10 A Yes.

11 Q And six feet tall?

12 A Each manufacturer's is a little bit different, but
13 they're roughly that size and they, they had started out as
14 very big, bulky items and were every year becoming smaller and
15 smaller and smaller.

16 Q So in looking -- you looked into the elevator room
17 through the, through the window on the door and you just
18 eyeballed the area inside there and determined that you need
19 space for 3 feet by 2 feet by 6 feet tall, and on that basis
20 you made the judgment that there was enough space in there for
21 it?

22 A Yes.

23 Q And did you ascertain whether the site owner would
24 allow the television transmitter to be placed in the elevator
25 room?

1 A No, I did not.

2 Q Well, that would be a key point, though, wouldn't
3 it?

4 A It would.

5 Q Now, did you determine whether the power supply
6 would be adequate to power the 1 kilowatt transmitter?

7 MR. SCHAUBLE: Objection, Your Honor. We're not
8 talking about, about what the witness did. I think we're
9 going beyond the bounds of relevance here.

10 MR. EMMONS: Your Honor, the statement in the
11 application submitted to the FCC talks about site preparation
12 and modifications made with respect to this site as well as
13 the other site, and it's certainly relevant to determine what
14 site preparation determinations and modification
15 determinations were made.

16 JUDGE CHACHKIN: Overruled.

17 MR. GARDNER: I saw that there was an electric
18 supply in there.

19 BY MR. EMMONS:

20 Q But you made no determination, no electrical
21 determination, concerning that supply, did you? You have --
22 an electrical engineer would need to look at that, wouldn't
23 they, before you could proceed with what your --

24 A Not necessarily. Most site owners would prefer that
25 you install your own electric from the meter in, in -- say

1 your site owners. In my experience most site owners prefer
2 that you install your own electric from the meter in, so I
3 made the determination that possibly the least expensive way
4 would be to provide a complete new electric drop for Raystay's
5 purposes.

6 Q Did you determine whether the roof of the Quality
7 Inn was strong enough or would be strong enough to accommodate
8 the antenna that would be needed?

9 MR. SCHAUBLE: Jus to clarify, are we talking about
10 the first visit, the second visit or both visits?

11 MR. EMMONS: All questions have referred to Lebanon,
12 the first visit.

13 MR. SCHAUBLE: Thank you.

14 MR. GARDNER: No, I did not.

15 BY MR. EMMONS:

16 Q But someone would have to make that determination
17 before you could proceed with construction, would they not?

18 A Yes.

19 Q Now, how much time did you spend peering through
20 this window in the elevator room?

21 A I recall on both visits spending -- to Lebanon?

22 Q Lebanon, yes.

23 A Spending about -- between 30 minutes and 60 minutes.

24 Q 30 minutes to 60 minutes looking through the
25 elevator room window?

1 A Oh, excuse me.

2 Q That was my question.

3 A You're right. That was your question. I don't
4 recall the exact amount of time I spent looking through the
5 elevator room window to the site area.

6 Q Now, Mr. Gardner, if one of the purposes of this
7 alleged inspection was to determine where the transmitter
8 would go at Lebanon, why haven't you told us anything about
9 the second transmitter?

10 A Well, first of all, I take umbrage at your word
11 alleged. I made the visits, so they're not alleged.

12 Q Why haven't you told us anything about the second
13 transmitter?

14 MR. SCHAUBLE: Objection, Your Honor. Counsel's
15 being argumentative at this point.

16 MR. EMMONS: No. I'm asking a question, Your Honor.

17 JUDGE CHACHKIN: I'll overrule the objection.

18 MR. GARDNER: The, the area was fairly large. It
19 had a lot of open space and it could hold two transmitters.

20 BY MR. EMMONS:

21 Q But you've been referring only to one transmitter in
22 your testimony, have you not?

23 A We were discussing one transmitter, I thought, yes.

24 Q But, in fact, Raystay was -- had two, two frequen-
25 cies and, therefore, was going to need two transmitters?

1 A Correct.

2 Q Turn, if you would, to Glendale Exhibit 209 which is
3 your written testimony.

4 JUDGE CHACHKIN: Is this something that we're going
5 to?

6 MR. EMMONS: No. This is the end of what we're
7 doing.

8 JUDGE CHACHKIN: All right. We've got one more
9 question, the last question, before we go to break.

10 BY MR. EMMONS:

11 Q Exhibit 209, Mr. Gardner, page 6.

12 A Yes.

13 Q And again focusing your attention about four lines
14 up from the bottom of the first paragraph, the sentence that
15 says, "I judged that the elevator room would be the best place
16 to put the transmitter."

17 A Yes.

18 Q You're talking there about just one transmitter,
19 right?

20 A No.

21 Q Well, you didn't use the word plural, did you?

22 A No.

23 Q Did you discuss --

24 MR. EMMONS: I have one more question, Your Honor,
25 before we move to a different --

1 BY MR. EMMONS:

2 Q Did you discuss your findings about the first visit
3 to Lebanon with anyone at Raystay?

4 A I don't believe that I did.

5 MR. EMMONS: This would be a good time to break,
6 Your Honor.

7 JUDGE CHACHKIN: All right. We'll take a ten minute
8 break.

9 (Whereupon, a brief recess was taken from 3:00 p.m.
10 until 3:10 p.m.)

11 BY MR. GARDNER:

12 Q Mr. Gardner, would you look at TBF Exhibit 205, page
13 22, please?

14 A 22?

15 Q Yes, and just to tell you what this is, this is a
16 copy of Raystay's construction permit application for one of
17 the two Lebanon frequencies, Channel 38.

18 MR. SCHAUBLE: Your Honor, I object. This portion
19 is not in evidence.

20 MR. EMMONS: Well, I want to ask a question about it
21 and if it's not in evidence, I'm going to offer it to go into
22 evidence.

23 MR. SCHAUBLE: Your Honor only took official notice
24 of the first, first seven pages of --

25 MR. EMMONS: Your Honor, we --

1 MR. SCHAUBLE: -- Exhibit 205.

2 JUDGE CHACHKIN: Well, let's see where the
3 questions go. You want to make your objection, you can. So
4 far no question has been asked. He just asked him to look at
5 it.

6 MR. EMMONS: Okay.

7 BY MR. EMMONS:

8 Q Mr. Gardner, does page 22 of TBF Exhibit 205
9 constitute the sketch that was contained in Raystay's
10 application for the Lebanon site?

11 MR. SCHAUBLE: Your Honor, may I approach the
12 witness again to the correct page?

13 MR. GARDNER: I'm on page 22. It appears that's
14 what this is, yes.

15 BY MR. EMMONS:

16 Q Now, you testified a little while ago, I believe,
17 that the elevator room on the top of the Quality Inn hotel was
18 on the roof and, in looking at that sketch, do you see that
19 there is a small building-like structure on top of the roof of
20 the main building depicted there?

21 A Yes.

22 Q Is that your recollection of approximately the
23 configuration of the, of the elevator room?

24 MR. SCHAUBLE: Objection, relevance, Your Honor.

25 JUDGE CHACHKIN: Well, I'll overrule the objection

1 as the witness has testified about this matter. If this helps
2 him in stating where the structure was located, I'll permit
3 it.

4 MR. GARDNER: It's approximate.

5 BY MR. EMMONS:

6 Q Okay. Now, you agree with me that the antenna is
7 -- as shown in this sketch is situated on top of the roof of
8 the elevator room? Is that correct?

9 A It's situated on top of the tower.

10 Q Well, and the tower, in turn, is situated on top of
11 the roof of the elevator room?

12 A Correct.

13 Q Now, with that information, my question then is when
14 you looked through the window of the elevator room which, in
15 turn, looked out through another window onto the roof, am I
16 correct that you could not see from where you were looking the
17 portion of the roof on which the tower and the antenna were to
18 be located?

19 A No.

20 Q I'm not correct about that?

21 A No.

22 Q In what way am I not correct or why am I incorrect?

23 A After my visits to the site I felt that it would
24 probably be better to place the tower structure on the roof of
25 the building rather than on the roof of the elevator room.